

THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

BENJAMIN BARRY KRAMER,

Plaintiff,

v.

UNITED STATES OF AMERICA, EDUARDO
GONZALEZ, and UNKNOWN AGENTS OF THE
U.S. MARSHALS SERVICE,

Defendants.

Case No. 15-cv-420-JPG

MEMORANDUM AND ORDER

This matter comes before the Court on the motion for summary judgment on Count 11, the only remaining claim in this case, filed by the defendant United States of America (Doc. 93). The United States seeks summary judgment on Count 11 on the grounds that plaintiff Benjamin Barry Kramer failed to exhaust his administrative remedies before filing suit as required by 28 U.S.C. § 2675(a). Rather than responding to the motion, Kramer filed a motion to voluntarily dismiss Count 11 without prejudice (Doc. 97).

The Court may construe a failure to file a response to a motion as an admission of the merits of the motion. Local Rule 7.1(c). The Court finds it appropriate to do so in this case since Kramer has asked to dismiss Count 11 without prejudice, the precise remedy the United States seeks in its summary judgment motion and the maximum remedy the Court is authorized to award for failure to exhaust administrative remedies.

Accordingly, the Court construes Kramer's failure to respond to the United States' motion as an admission of its merits and

- **GRANTS** the United States' motion for summary judgment (Doc. 93);

- **DISMISSES** Count 11 **without prejudice** for failure to exhaust administrative remedies;
- **DENIES as moot** Kramer's motion for voluntary dismissal (Doc. 97); and
- **DIRECTS** the Clerk of Court to enter judgment accordingly.

IT IS SO ORDERED.

DATED: September 29, 2020

s/ J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE